

REMARKS

This Response is submitted in response to the Office Action dated September 12, 2007, having an extended shortened statutory period set to expire February 12, 2008. Claims 1-20 are presently pending.

Rejections Under 35 U.S.C. § 103

In paragraph 8 of the present Office Action, Claims 1, 3-5, 8, 10-12, 15, 17-18 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Becka et al.* (U.S. Patent Application Publication No. 2003/0074090 – “*Becka*”) in view of *Dumarot et al.* (U.S. Patent No. RE38, 865 E – “*Dumarot*”). In paragraph 9 of the present Office Action, Claims 2, 9 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Becka* in view of *Dumarot*, and further in view of “*PowerQuest PartitionMagic 8.0 User Guide*” (“*PartitionMagic*”). In paragraph 10 of the present Office Action, Claims 13-14 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Becka* in view of *Dumarot*, and further in view of *Talbert* (U.S. Patent Application Publication No. 2004/0114265 – “*Talbert*”). Applicants respectfully traverse all rejections.

The present patent application is assigned to International Business Machines Corporation, as recorded on Reel 014911, Frame 0950 of assignments filed with the USPTO. *Dumarot*, as shown on its face, also has an assignee of International Business Machines Corporation. *Dumarot*, which is cited against all pending claims, was not issued until November 1, 2005, which is after the filing date of January 16, 2004 of the present patent application. Therefore, *Dumarot* is not available as prior art under 35 U.S.C. § 103(c).

A February 10, 2008 telephone call, between the undersigned and Supervisor Weilon Lo of the USPTO, confirmed that *Dumarot* is not available as prior art under 35 U.S.C. § 103(c). If, however, the Examiner should cite underlying patent US 6,059,842, from which *Dumarot* was reissued, the undersigned understands that a new non-final office will be issued by the Examiner.

If the undersigned has misunderstood the position of the Examiner's office, a telephone call to the undersigned at 512.617.5533 would be greatly appreciated.

CONCLUSION

No additional extension of time, beyond that requested above, for this response is believed to be necessary. However, in the event an additional extension of time is required, that extension of time is hereby requested. Please charge any fee associated with an additional extension of time as well as any other fee necessary to further the prosecution of this application to **IBM CORPORATION DEPOSIT ACCOUNT No. 09-0447**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J E Boice', with a long horizontal line extending to the right.

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